

RELIGIOUS OBJECTOR PROVISIONS

INTRODUCTION

Some people have religious beliefs that lead them to object to belonging to or paying dues to a trade union. The [Labour Relations Code](#) allows unions to negotiate clauses making membership or dues contributions mandatory. Section 29 balances this general right of the trade union with a specific protection for people with genuine religious objections. This policy discusses:

- what the statute's protection says;
- the interpretations given by the Board so far; and
- some procedural guidelines for dealing with applications under Section 29.

SECTION 29

Section 29 provides:

29(1) Subject to subsection (2), nothing in this Act prevents a trade union from continuing an existing collective agreement or entering into a new collective agreement with an employer or employers' organization whereby all the employees or any unit of employees of the employer or of one or more employers represented by the employers' organization are required to be members of a trade union.

(2) If the Board is satisfied that an employee because of the employee's religious conviction or religious belief

- (a) objects to joining a trade union, or
- (b) objects to the paying of dues or other assessments to a trade union,

the Board may order that the provisions of a collective agreement of the type referred to in subsection (1) do not apply to the employee and that the employee is not required to join the trade union, to be or to continue to be a member of the trade union, or to pay any dues, fees or assessments to the trade union, if amounts equal to any initiation fees, dues or other assessments are paid by the employee to, or are remitted by the employer to, a charitable organization agreed on by the employee and the trade union.

(3) If the employee and the trade union fail to agree on a charitable institution for the purpose of subsection (2), the Board may designate a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) to which the amounts referred to in that subsection must be paid or remitted.

The section means:

- It legal for a trade union to negotiate a union or closed-shop provision in a collective agreement. See: [[Trade Union Dues Provisions, Chapter 33\(g\)](#)].
- The onus is on the religious objector to satisfy the Board of their eligibility.
- The applicant's objections must be because of religious conviction or religious belief. General objections to unions are not enough.
- Some collective agreements make employees join a trade union (union or closed-shop

clauses). Others just require a dues payment, leaving membership voluntary (called “Rand Formula” clauses). The section protects religious objectors whether they object to fees or membership or both.

- The Board has the power to order that the contract clauses objected to do not apply to the objector. This does not remove objectors from the bargaining unit or take them out of the collective agreement.
- The Board can order specifically that the objector is not obliged to be a member or pay the dues, etc. This is for clarity. It also protects the member from other actions by the union for non-payment of dues, beyond any action the union might take under the collective agreement.
- A qualified objector must still pay monies (equal to the union dues, fees or assessments) to a charity. The protection is not available without such charity payments. Charity payments can be paid directly, or by check-off and employer remittance. Unions may want to negotiate this point, to make sure the payments are really made.
- The applicant and the union have the initial responsibility to agree on a charity. They should try to do so even if they disagree about whether the applicant qualifies as a religious objector. The Board only picks a charity if they cannot agree.
- A Board-designated charity must qualify for tax deductibility, although the parties are free to agree upon some other charity. See below about where to find out about Income Tax Registration.

ALBERTA DECISIONS ON SECTION 29

The Board has considered section 29 a number of times since the 1988 enactment of Sections 29(2) and (3) (then Sections 27(2) and (3)). See:

- *Carol Richardson v. UNA* [1989] A.L.R.B.R. 296
- *Joseph Rossler v. CAW-Canada* [1991] Alta.L.R.B.R. 485
- *Imperial Oil v. CEP 0777 and K. Peter* [1997] Alta. L.R.B.R. 293
- [Frank Corliss v. UA 488](#) [2002] Alta.L.R.B.R. LD-008, 208

These decisions hold that Section 29 allows relief from all forms of union security or dues clauses. The union, in *Richardson*, argued that Section 29(2) and (3) only applied to union or closed-shop clauses. They argued that Sections 29(2) and (3) were just an exception to Section 29(1). The Board rejected this argument. It held that objectors can apply for relief from any collective agreement clause that requires union membership or that provides for a compulsory deduction or payment of union dues, assessments or initiation fees.

These decisions also require that the applicant’s beliefs must be sincere, religious in nature and the cause of their objections to unions.

Sincere

The applicant's beliefs and objections must be sincere. The Board may judge this by the applicant's demeanour in giving evidence. The Board may consider the applicant's past actions to assess sincerity. When did the objection arise? Was it when this issue first arose at work, or later, perhaps in response to some labour disruption? Does the applicant's religious life support the position the applicant takes? For example, is the applicant a practising member of a religious group?

Religious

It is the applicant's personal convictions and beliefs the Board must consider. They need not be tied to an established religious body or sect. If the applicant is a practising member of a church with tenets that oppose union support, this may reinforce both the sincere and religious nature of the applicant's views.

"Religious" means the beliefs must relate to the divine, or mankind's perceived relationship to the divine, as opposed to earthly institutions. A religious conviction or belief involves the human recognition of some higher or unseen power as having control of human destiny, and as being entitled to obedience, reverence and worship. The views must be religious as opposed to being moral, social or political views.

The views of persons with a strong religious bent blend into their other views. In "mixed motivation" cases the Board must take an objective view of the cause of the applicant's beliefs. The Board has to be satisfied that the objections indeed have a religious, as opposed to a more general, basis. The Board may find an applicant's views secular in nature even though the applicant believes they form part of their overall religious convictions.

Cause of the Objections

This requirement relates directly to the first two. A religious person may object to unions. This alone is insufficient. The objection must be tied into the religious beliefs. The objections may emanate from several causes. The religious cause must predominate for the objection to succeed. The religious objection must also go to the fundamental aspects of union membership or financial support, not just incidental aspects of union affiliation. This arises most frequently when a union supports or contributes to a cause to which the applicant objects, even though they do not object to the union itself.

PROCEDURES

Applications based on religious exemptions can vary widely, depending upon the nature of the applicant's beliefs, the type of collective agreement clause involved, and the attitude of the trade union. What follows are a series of pointers and policies for processing such applications.

- Most applications will begin with an informal request for information. Officers can give out information informally before receiving an application. Be careful not to overly discourage or encourage an application on the basis of incomplete facts. This section involves a

difficult discretion. It is the Board panel, not the officer, that must make the ruling.

- Remember you are dealing with a person's religious feelings and often strongly held personal views about trade unions. Treat these applications with sensitivity.
- The exemption only takes place when the Board grants an order or the union agrees. Applicants cannot just stop paying dues because they have applied for an exemption. The Board has never decided whether orders can have any retroactive effect.

The Application

The Board has an optional form for Section 29 applications. The form contains a useful checklist of information needed.

An officer should review the initial application with the applicant, if convenient. The officer should make sure the Board has all necessary particulars, and that the applicant's position is clearly expressed and understood.

Check to make sure you have all the necessary addresses, etc. Rule 6 requires this information whether a form is used or not.

Encourage applicants to focus on why their religious beliefs cause them to object to union dues or membership, rather than setting out their religious views in general. This is only an application form, and does not require a detailed essay on theology.

Membership in a religious group is not a precondition to qualifying. Some groups, such as Seventh-Day Adventists, have well established positions on this topic which would support an exemption for active adherents to that faith.

Review the collective agreement carefully. Get a copy from Information Services rather than making the applicant go away and get one. Make sure you and the applicant understand what it says. Is membership compulsory? What fees, assessments or dues must the member pay? Does the agreement contain its own religious exemption provision and, if so, has it been followed or considered?

This information is to help the Board contact the appropriate union official. It also focuses the applicant's attention on their responsibility to raise the issue with the union themselves to get consent, or at least to get agreement on a charity. Encourage those who have not contacted the union to do so. Officers may help applicants with this contact if they appear to lack the confidence to do so themselves.

See *Establishing the Charity* (below) for information on eligible charities and a caution about suggested charities.

Have the applicant specify what they want the Board to order. This will help focus on what it is the applicant truly objects to in the collective agreement provisions.

Dispute Resolution Options

The officer and Director of Settlement should agree on a dispute resolution strategy that will bring the application to a quick resolution. Depending on the union's initial attitude, a Section 11 informal procedure may be advisable. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)].

Most religious objector applications should be dealt with as informally as possible. There will rarely be a need for an officer's report although officer mediation may work to achieve a settlement, or at least agreement on a charity. The officer might arrange a meeting between the applicant and the union to try to resolve the issue. There is little point to long exchanges of correspondence on such applications. If the applicant's claim appears weak or the union maintains an objection, setting the matter straight to hearing may be the best strategy.

Notice and Posting

The union involved should receive a copy of the application form from the applicant. Ensure this service has occurred. An officer should call the union representative with whom the applicant has dealt to discuss the matter right away.

While the employer is not a directly affected party, they should receive notice. The union or the applicant may want an order that the employer remit funds to the charity.

The Board's policy is to post notices of Section 29 religious exemption applications only if they involve a group of employees. Applications involving isolated individuals require no worksite notice.

Establishing the Charity

Parties should be urged to agree between themselves on a suitable charity, even if they do not agree on whether the applicant is entitled to an exemption. The officer should try to mediate this if the parties cannot agree.

Parties can agree on any charity they want.

If the Board has to decide on the charity, the only ones eligible are those registered under the *Income Tax Act*. Eligible charities have a Canada Customs and Revenue Agency registration number. You can check this on-line at http://www.cra-arc.gc.ca/tax/charities/online_listings/charity_listings-e.html .

Requiring a charitable donation ensures objectors do not benefit financially by objecting. It prevents "free-riding" therefore the Board is unlikely to direct payment to a charity the applicant already

supports. The Board is also unlikely to direct a charity that offends the applicant's religious sensibilities. It is most likely to pick a neutral charity that neither offends nor benefits either party.

Granting Orders

When an applicant succeeds, they will need a formal order from the Board. This may arise by consent, by a Section 11 (informal procedure) decision that the parties do not contest, or by order of a panel after a hearing. All such orders follow basically the same format.

If the union consents to the application, either immediately, or following some settlement process, proceed as follows. Do an officer's memorandum setting out the terms of the consent, attaching any agreement or letters as appropriate. Prepare a draft order reflecting the form of order agreed to. Then put the application to a Board panel, without a formal hearing, for approval. The Chair or Vice-Chair will sign the order and the hearing summary.

If a Section 11 process goes in favour of the applicant, they should ask that the ruling be made into a formal order. Follow the standard Section 11 procedure for this. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)]. If there is no objection, proceed to draft the order and get it signed as if it were by consent.

If a panel rules in favour of the applicant, draw up the order for the Chair or Vice-Chair to sign, following the oral or written decision.